

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.³ The facts of the case as presented in the prior decision are incorporated herein by reference. The relevant facts are set forth below.

On January 11, 2016 appellant, then a 71-year-old retired distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 23, 1996 she was injured when her supervisor asked her to lift a 70-pound sack of mail, which she alleged was outside of her work restrictions. A supervisor noted on the claim form that appellant had retired 15 years ago and that the alleged injury occurred 20 years ago.

By decision dated February 24, 2016, OWCP denied appellant's claim. It found that the claim was untimely filed, as the alleged date of injury was June 23, 1996, but the claim was not filed until January 20, 2016, which was beyond the three-year time limit. OWCP also found that appellant had not submitted evidence that her supervisor had actual knowledge within 30 days of the alleged injury.

On March 11, 2016 appellant requested reconsideration of OWCP's February 24, 2016 decision. By decision dated March 23, 2016, OWCP denied appellant's request for reconsideration.

On May 6, 2016 appellant filed a timely appeal to the Board from the February 24, 2016 merit decision and the March 23, 2016 nonmerit decision of OWCP. By decision dated November 16, 2016, the Board found that appellant had not submitted sufficient evidence to establish that her claim was timely filed.⁴ The Board noted that the only evidence provided in support of finding that appellant had provided notice of injury to a supervisor within 30 days was a partly illegible and incomplete memorandum dated March 19, 1997 discussing a separate claim and noting that appellant had previously claimed a recurrence of temporary total disability on or after June 22, 1996. The Board found that whether appellant's claim for recurrence was mistaken or not, the memorandum did not constitute probative evidence that appellant had notified her immediate superior of a new employment injury on June 22 or 23, 1996, such that her immediate supervisor would have had actual knowledge of the new injury within 30 days. Furthermore, the Board found there was no evidence that written notice of injury was given within 30 days. The Board also found that OWCP properly denied appellant's March 11, 2016 request for reconsideration as the legal argument she had submitted was repetitious and the evidence was irrelevant to the timelines issue.

On February 17, 2017 OWCP received appellant's February 14, 2017 request for reconsideration. With her request, appellant submitted a letter dated February 10, 2017 in which she alleged that she had notified her supervisor of the claimed incident of "June 22, 1996." She stated that her supervisor had filled out the wrong form intentionally. Appellant alleged that, in a telephonic conversation with an OWCP representative, the representative had told her that her

³ Docket No. 16-1131 (issued November 16, 2016).

⁴ *Id.*

claim file had been deleted, and alleged that OWCP engaged in fraudulent conduct.⁵ She further noted that her treating physician had found that she reached maximum medical improvement on October 16, 2006, and diagnosed her with additional psychiatric illnesses related to the original injury.⁶

By decision dated February 23, 2017, OWCP denied appellant's request for reconsideration. It found that appellant had not submitted any evidence or legal arguments not previously considered, or any new and relevant pertinent evidence in support of her request for reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁷ Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

The underlying issue is whether appellant has submitted sufficient evidence to establish that she filed her June 23, 1996 claim in a timely manner, or that she provided a written notice of a new injury to her supervisor within 30 days, or that her supervisor had actual knowledge of the new injury.

With her February 17, 2017 request for reconsideration, appellant submitted a narrative statement containing a series of allegations. She stated that her supervisor had filled out the wrong form intentionally. However, this statement is irrelevant as it does not address whether her supervisor had actual knowledge of an employment-related injury within 30 days of its occurrence.⁹ Appellant alleged that, in a telephonic conversation with OWCP, she had been told

⁵ There is no record of a telephonic conversation with an OWCP hearing representative in which the representative told appellant that her claim file had been deleted. The Board notes that the claim file for OWCP File No. xxxxxx822 has not been deleted.

⁶ This alleged report was not submitted to the case record.

⁷ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

⁸ 20 C.F.R. § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

⁹ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case. *M.N.*, Docket No. 16-1410 (issued June 28, 2017); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

that her claim file had been deleted. She alleged that the OWCP claims examiner engaged in fraudulent conduct. The Board notes that there is no record of a telephonic conversation with OWCP in which appellant was told that her claim file had been deleted. The Board further notes that OWCP's File No. xxxxxx822 has not been deleted, as this is the file on appeal. Appellant further noted that her treating physician had found that she reached maximum medical improvement on October 16, 2006, and diagnosed her with additional psychiatric illnesses related to the original injury. However, this report was not submitted to the case record. Appellant's allegations in her reconsideration request neither showed that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP. Her allegations did not address the underlying issue in this case,¹⁰ and therefore she has not met her burden under the first or second requirements of 5 U.S.C. § 8128(a).

A claimant may also be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant evidence in this claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁰ See *G.G.*, Docket No. 16-0907 (issued March 20, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2016 is affirmed.

Issued: September 1, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board